

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
THE TALBOTS, INC.	:	ORDER
	:	DTA NO. 820168
for Redetermination of a Deficiency or for Refund	:	
Corporation Franchise Tax under Article 9-A of the	:	
Tax Law for the Years 1994, 1995 and 1996	:	

Petitioner, The Talbots, Inc., 175 Beal Street, Hingham, Massachusetts 02043, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1994, 1995 and 1996.

The Division of Taxation ("Division"), by its representative, Christopher C. O'Brien, Esq. (Nicholas A. Behuniak, Esq., of counsel), filed a motion on September 9, 2005 for an order pursuant to 20 NYCRR 3000.6 vacating a demand for a bill of particulars dated August 22, 2005 and filed by petitioner, The Talbots, Inc. ("Talbots"). Talbots, appearing by Brann & Isaacson, Esqs. (Martin I. Eisenstein, Esq., of counsel), did not file a response to the Division's motion. Pursuant to 20 NYCRR 3000.5(b), the 90-day period for issuance of this order commenced 30 days after the filing of the Division's motion, to wit, on October 10, 2005. Based upon the pleadings, motion papers and other documents filed by the parties, Dennis M. Galliher, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Petitioner commenced this proceeding by filing a petition with the Division of Tax Appeals on September 13, 2004 challenging certain notices of deficiency asserting additional tax due as issued by the Division. Thereafter, petitioner filed an amended petition on November 24, 2004.

2. The Division filed its answer to the petition on December 8, 2004. Thereafter, the Division filed its answer to the amended petition on December 22, 2004.

3. Petitioner filed a demand for a bill of particulars on August 22, 2005. On September 9, 2005, the Division filed the subject motion seeking an order vacating petitioner's demand as not timely filed.

CONCLUSIONS OF LAW

A. The Tax Appeals Tribunal Rules of Practice and Procedure permit the use of a bill of particulars in proceedings in the Division of Tax Appeals. Specifically, section 3000.6(a) of the Rules provides as follows:

(1) After all pleading have been served, a party may wish the adverse party to supply further details of the allegations in a pleading to prevent surprise at the hearing and to limit the scope of the proof. For this purpose, a party may serve written notice on the adverse party demanding a bill of particulars within 30 days from the date on which the last pleading was served.

(2) The written demand for a bill of particulars must state the items concerning which such particulars are desired. If the party upon whom such demand is served is unwilling to give such particulars, he or she may, in writing the supervising administrative law judge, make a motion to the tribunal to vacate or modify such demand within 20 days after receipt thereof. The motion to vacate or modify should be supported by papers which specify clearly the objections and the grounds for objection. If no such motion is made, the bill of particulars demanded shall be served within 30 days after the demand, unless the administrative law judge designated by the tribunal shall direct otherwise.

B. The last pleading filed in this matter was the Division's December 22, 2004 answer to the amended petition. In turn, the demand for a bill of particulars was filed some eight months later on August 22, 2005, which is well beyond the 30-day period for filing such a demand as specified at 20 NYCRR 3000.6(a)(1). The Division's motion to vacate the demand was filed on September 9, 2005, which is within 20 days after the filing of the demand as required (20 NYCRR 3000.6[a][2]). Under these facts, the demand for a bill of particulars was not timely filed and the same is, therefore, vacated.

C. The Division's motion for an order vacating the petitioner's demand for a bill of particulars is hereby granted.¹

DATED: Troy, New York
November 3, 2005

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

¹ As noted, petitioner did not respond to the Division's motion to vacate the demand. In its memorandum in support of the motion, the Division indicated that it will provide to petitioner the relevant audit report including information regarding the conduct of the audit underlying the notices of deficiency at issue, and will continue to review all additional documents and reports to be filed by petitioner. A prehearing conference was held in this matter on October 6, 2005, at which time dates were set for the parties to exchange additional documents and reports. The tenor of such prehearing conference reflected the parties ongoing willingness to communicate regarding the issues and facts in this case which willingness may, at this point and in practical terms, have obviated the necessity for the demanded bill of particulars.